

CREW | citizens for responsibility
and ethics in washington

March 20, 2018

Federal Election Commission
Office of Complaints Examination
and Legal Administration
1050 First Street, N.E.
Washington, D.C. 20002

6538R

Re: MUR 6538/Amended Complaint.

Dear Sir or Madam:

Please find under cover of this letter an amended complaint in MUR 6538. We file this amended complaint to supplement the complainants provided in CREW's original complaint, filed on March 8, 2012. In the time during which CREW's complaint has been pending, CREW has experienced staff changes necessitating an update to the parties to the complaint. CREW submits this amended complaint to substitute me, CREW's current executive director, as a complainant for CREW's previous executive director, Melanie Sloan. Accordingly, the amended complaint includes new allegations specific to me (*see* Am. Compl. ¶¶ 1, 6, and conclusion), and removes allegations specific to Ms. Sloan. The exhibits to the amended complaint are identical to the exhibits to the original complaint and are incorporated therein, but, in the interest of not duplicating copies in the administrative record, CREW does not resubmit the exhibits.

Please further note that our address has changed. Please direct all future correspondence to the address below.

Sincerely,



Noah Bookbinder
Executive Director
Citizens for Responsibility and Ethics
in Washington
455 Massachusetts Ave., N.W.
Washington, D.C. 20001
(202) 408-5565 (phone)
(202) 588-5020 (fax)
nbookbinder@citizensforethics.org

Encl.

2018 APR -3 AM 9:22
OFFICE OF
GENERAL COUNSEL

OFFICE OF
GENERAL COUNSEL

FEDERAL ELECTION COMMISSION
2018 JUL 11 -3 AM 9: 23

In the matter of:

Americans for Job Security
Stephen DeMaura, individually and
in his capacity as Treasurer

MUR No. 6538R

AMENDED COMPLAINT

1. Citizens for Responsibility and Ethics in Washington ("CREW") and Noah Bookbinder bring this amended complaint before the Federal Election Commission ("FEC") seeking an immediate investigation and enforcement action against Americans for Job Security and Stephen DeMaura, individually and as president and treasurer of Americans for Job Security, for direct and serious violations of the Federal Election Campaign Act ("FECA").

Complainants

2. Complainant CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the right of citizens to be informed about the activities of government officials and to ensuring the integrity of government officials. CREW is dedicated to empowering citizens to have an influential voice in government decisions and in the governmental decision-making process. CREW uses a combination of research, litigation, and advocacy to advance its mission.

3. In furtherance of its mission, CREW seeks to expose unethical and illegal conduct of those involved in government. One way CREW does this is by educating citizens regarding the integrity of the electoral process and our system of government. Toward this end, CREW monitors the campaign finance activities of those who run for federal office and publicizes those who violate federal campaign finance laws through its website, press releases and other methods

15. AJS spent \$443,959 on September 10 and 23, 2010 producing and broadcasting two advertisements telling voters "it's time vote . . . out" Rep. Jason Altmire (D-PA), and to "vote against" him. *See* October Quarterly Report at 3, 5, 8; Exhibit A, tracks 7 and 8.

16. AJS spent \$358,984 on September 14 and 29, 2010 producing and broadcasting two advertisements telling voters to "vote no on" Rep. Robert Etheridge (D-NC), and to "vote against" him. *See* October Quarterly Report at 3, 6, 9; Exhibit A, tracks 9 and 10.

17. AJS spent \$464,795 on September 15 and 30, 2010 producing and broadcasting two advertisements telling voters to "vote no on career politician" Rep. Rick Boucher (D-VA), and to "vote against" him. *See* October Quarterly Report at 3, 7, 9; Exhibit A, tracks 11 and 12.

18. AJS spent \$472,220 on September 16 and 30, 2010 producing and broadcasting two advertisements telling voters to "vote against" Rep. Michael Arcuri (D-NY). *See* October Quarterly Report at 4, 6, 9; Exhibit A, tracks 13 and 14.

19. AJS spent \$559,586 on September 17 and October 1, 2010 producing and broadcasting two advertisements telling voters to "vote against" Rep. Larry Kissell (D-NC). *See* October Quarterly Report at 4, 10; Year-End Report at 45; Exhibit A, track 15.

20. AJS spent \$750,024 on September 17 and October 1, 2010 producing and broadcasting two advertisements telling voters to "vote against" Rep. Heath Shuler (D-NC). *See* October Quarterly Report at 4, 10; Year-End Report at 45; Exhibit A, track 16.

21. In addition, AJS spent more than \$500,000 in independent expenditures on get-out-the vote calls, Internet advertising, and direct mail in 123 federal elections. *See* Year-End Report at 2-45.

22. AJS also spent significant funds on electioneering communications. For example, AJS spent \$479,268 on January 15, 2010 producing and broadcasting an advertisement

U.S.C. § 30104]; 11 C.F.R. §§ 104.1, 104.3. Mr. Bookbinder is harmed when an individual, candidate, political committee, or other entity fails to report campaign finance activity as required by the FECA. *See FEC v. Akins*, 524 U.S. 11, 19 (1998), *quoting Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976) (political committees must disclose contributors and disbursements to help voters understand who provides which candidates with financial support). Mr. Bookbinder is further harmed when the FEC fails to properly administer the FECA's reporting requirements, limiting his ability to review campaign finance information.

Respondents

7. Americans for Job Security ("AJS") is a tax exempt organization organized under section 501(c)(6) of the Internal Revenue Code and based in Alexandria, Virginia.
8. AJS is not registered as a political committee with the FEC.
9. Stephen DeMaura is the President and Treasurer of AJS.

Factual Allegations

10. Between January 15 and October 31, 2010, AJS spent \$8,971,043 on independent expenditures and electioneering communications, largely on broadcasting television and Internet advertisements in 20 primary and general elections.¹ *See* Americans for Job Security, FEC Form 5: October Quarterly Report, October 15, 2010 ("October Quarterly Report"); Americans for Job Security, FEC Form 5: Year-End Report, January 31, 2011 ("Year-End Report"); Americans for Job Security Electioneering Communications Reports, available at: <http://query.nictusa.com/cgi-bin/fecimg/?C30001135>. Most of the advertisements AJS broadcast and disclosed as independent

¹ AJS's spending through October 31, 2011 is provided to permit a direct comparison between AJS's spending on independent expenditures and electioneering communications and the group's total spending for its fiscal year, which ended on October 31, 2011 according to the tax return AJS filed with the Internal Revenue Service. *See* AJS 2009 Form 990, at 1 (attached as Exhibit C). AJS's spending for calendar year 2011 is provided below.

expenditures and electioneering communications are included on the discs attached as Exhibits A and B.²

11. AJS reported to the FEC it spent \$4,414,524 on independent expenditures and \$4,556,519 on electioneering communications through October 31, 2010, and \$4,908,846 on independent expenditures and electioneering communications for calendar year 2010. *See* October Quarterly Report at 1; Year-End Report at 1-3, 43-47.

12. A review of AJS's advertisements reported as independent expenditures for calendar year 2010 shows they all expressly advocated the election or defeat of identified candidates for federal office. For example, AJS spent \$156,243 on September 9 and 23, 2010 producing and broadcasting two advertisements telling voters "Ohio needs to vote against" Rep. Zack Space (D-OH), and to "vote against" him. *See* October Quarterly Report at 2, 5, 7; Exhibit A, tracks 1 and 2.

13. AJS spent \$323,234 on September 9 and 23, 2010 producing and broadcasting two advertisements telling voters "it's time to vote against" Democratic House candidate Bryan Lentz, and to "vote against" him. *See* October Quarterly Report at 2, 5, 8; Exhibit A, tracks 3 and 4.

14. AJS spent \$352,431 on September 10 and 24, 2010 producing and broadcasting two advertisements telling voters "we can't afford to send" Democratic House candidate Trent Van Haften to Washington, and to "vote against" him. *See* October Quarterly Report at 2, 6, 7; Exhibit A, tracks 5 and 6.

² CREW obtained most of the advertisements on the discs from AJS's website, <http://www.savethejobs.org/mediacenter.php>, and AJS's YouTube channel, <http://www.youtube.com/user/ajssavejobs>. In addition, one was obtained from <http://politicalcorrection.org/adcheck/201009210002>, and one from <http://politicalcorrection.org/adcheck/201010250008>.

15. AJS spent \$443,959 on September 10 and 23, 2010 producing and broadcasting two advertisements telling voters "it's time vote . . . out" Rep. Jason Altmire (D-PA), and to "vote against" him. *See* October Quarterly Report at 3, 5, 8; Exhibit A, tracks 7 and 8.

16. AJS spent \$358,984 on September 14 and 29, 2010 producing and broadcasting two advertisements telling voters to "vote no on" Rep. Robert Etheridge (D-NC), and to "vote against" him. *See* October Quarterly Report at 3, 6, 9; Exhibit A, tracks 9 and 10.

17. AJS spent \$464,795 on September 15 and 30, 2010 producing and broadcasting two advertisements telling voters to "vote no on career politician" Rep. Rick Boucher (D-VA), and to "vote against" him. *See* October Quarterly Report at 3, 7, 9; Exhibit A, tracks 11 and 12.

18. AJS spent \$472,220 on September 16 and 30, 2010 producing and broadcasting two advertisements telling voters to "vote against" Rep. Michael Arcuri (D-NY). *See* October Quarterly Report at 4, 6, 9; Exhibit A, tracks 13 and 14.

19. AJS spent \$559,586 on September 17 and October 1, 2010 producing and broadcasting two advertisements telling voters to "vote against" Rep. Larry Kissell (D-NC). *See* October Quarterly Report at 4, 10; Year-End Report at 45; Exhibit A, track 15.

20. AJS spent \$750,024 on September 17 and October 1, 2010 producing and broadcasting two advertisements telling voters to "vote against" Rep. Heath Shuler (D-NC). *See* October Quarterly Report at 4, 10; Year-End Report at 45; Exhibit A, track 16.

21. In addition, AJS spent more than \$500,000 in independent expenditures on get-out-the vote calls, Internet advertising, and direct mail in 123 federal elections. *See* Year-End Report at 2-45.

22. AJS also spent significant funds on electioneering communications. For example, AJS spent \$479,268 on January 15, 2010 producing and broadcasting an advertisement

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promoting Scott Brown, then the Republican candidate in the January 19, 2010 special election for a U.S. Senate seat in Massachusetts. Americans for Job Security, FEC Form 9, 24 Hour Notice of Disbursements/Obligations for Electioneering Communications, Amended, June 30, 2010, at 3. AJS's advertisement first told viewers that "behind closed doors, Washington decides the future of our health care, with no transparency or accountability. They are slashing Medicare and raising taxes, and only listening to the special interests." AJS then said that "one Massachusetts leader says slow down, get health care right. Scott Brown says protect Medicare, don't raise taxes, listen to the people, not the lobbyists." AJS's advertisement concluded by encouraging voters to "call Scott Brown and tell him you agree Washington should listen to us on health care for a change." Exhibit B, track 1.

23. AJS spent \$913,096 on May 3, 2010 producing and broadcasting an advertisement criticizing William (Bill) Halter, then a candidate in the June 8, 2010 primary election for the Democratic nomination for a U.S. Senate seat in Arkansas. Americans for Job Security, FEC Form 9, 24 Hour Notice of Disbursements/Obligations for Electioneering Communications, May 3, 2010, at 2. In AJS's advertisement, several Indian speakers ostensibly "thanked" William Halter for providing jobs to India. The narrator then stated that "while millionaire Bill Halter was the highly paid director of a U.S. company, they exported jobs to Bangalore, India," and "with almost 65,000 Arkansans out of work, we need jobs, too." AJS's advertisement concluded by stating "Bangalore says 'thanks' Bill Halter. Arkansas, tell Bill Halter thanks for nothing." Exhibit B, track 2.

24. AJS spent \$490,000 on May 6, 2010 producing and broadcasting another advertisement criticizing Mr. Halter. Americans for Job Security, FEC Form 9, 24 Hour Notice of Disbursements/Obligations for Electioneering Communications, Amended, June 30, 2010, at

3. This advertisement first told viewers that “politicians – they say one thing, and do another.” AJS’s advertisement then stated “Bill Halter says he’s never outsourced American jobs, but the facts say that when he was a highly paid corporate director, his company outsourced jobs to India. Those jobs could have boosted a community here in Arkansas, but all they boosted was Bill Halter’s company’s bottom line.” The advertisement concluded by encouraging voters to “call Bill Halter, tell him to support policies for job creation here in America.” Exhibit B, track 3.

25. AJS spent \$143,000 on June 24, 2010 producing and broadcasting an advertisement promoting Ken Buck, then a candidate in the August 10, 2010 primary election for the Republican nomination for a U.S. Senate seat in Colorado. Americans for Job Security, FEC Form 9, 24 Hour Notice of Disbursements/Obligations for Electioneering Communications, June 25, 2010, at 2. AJS’s advertisement first told viewers that “Washington in a cesspool filled with political insiders who think more government is the solution.” AJS’s advertisement then stated: “Not Ken Buck. Ken Buck stands up to the insiders in both parties. Ken Buck’s conservative plan to get Colorado back to work: No to bailouts, no to debt, no to big government spending. Yes to low taxes for job creation that helps families.” AJS’s advertisement concluded by encouraging voters to “call Ken Buck, tell him to keep fighting for smaller government and policies that support taxpayers.” Exhibit B, track 4.

26. AJS spent an additional \$171,700 on June 29, 2010 broadcasting the advertisement, Americans for Job Security, FEC Form 9, 24 Hour Notice of Disbursements/Obligations for Electioneering Communications, June 30, 2010, at 3, and a further \$126,496.70 on July 6, 2010 broadcasting it, Americans for Job Security, FEC Form 9,

24 Hour Notice of Disbursements/Obligations for Electioneering Communications, July 6, 2010, at 3.

27. AJS spent \$318,874.30 on July 13, 2010 producing and broadcasting an advertisement criticizing Mr. Buck's opponent in the August 10, 2010 primary election, Jane Norton. Americans for Job Security, FEC Form 9, 24 Hour Notice of Disbursements/Obligations for Electioneering Communications, July 14, 2010, at 3. This advertisement began by stating "our country is at the brink – Colorado workers and families need relief." AJS's advertisement then stated: "Yet, Jane Norton supported the largest tax hike in Colorado history, costing us billions. And Jane Norton's record on government spending? The state bureaucracy she managed grew by \$43 million in just three years." The advertisement concluded by encouraging voters to "call Jane Norton, tell her no more tax hikes and government spending." Exhibit B, track 5.

28. AJS spent an additional \$175,956.60 on July 20, 2010 broadcasting this advertisement. Americans for Job Security, FEC Form 9, 24 Hour Notice of Disbursements/Obligations for Electioneering Communications, July 20, 2010, at 3.

29. AJS spent \$585,800 on July 26, 2010 broadcasting another advertisement criticizing Ms. Norton. Americans for Job Security, FEC Form 9, 24 Hour Notice of Disbursements/Obligations for Electioneering Communications. Amended, July 28, 2010, at 3. This advertisement began by stating "liberal politicians will say anything, but talk is cheap," as photographs of Ms. Norton, President Obama, and Sen. Michael Bennet (D-CO) were shown. AJS's advertisement then asserted the "real Norton record" is that "Norton pushed the largest tax hike in Colorado history, as a regulator she managed a multimillion dollar surge in government spending. Yup, talk is cheap. But Jane Norton's real record has cost us plenty." The

advertisement concluded by encouraging voters to “tell Jane Norton no more high taxes and spending.” Exhibit B, track 6.

30. AJS spent \$45,100 on July 26, 2010 producing and broadcasting an advertisement criticizing Billy Long, then a candidate in the August 3, 2010 primary election for the Republican nomination for a U.S. House seat in Missouri. Americans for Job Security, FEC Form 9, 24 Hour Notice of Disbursements/Obligations for Electioneering Communications, July 26, 2010, at 3. AJS’s advertisement first told viewers “reckless spending, earmarks, debt – bankrupting our country. Politicians and insiders are at the trough.” The advertisement then said “take Billy Long – he says he’s against earmarks, but while on the airport board of directors he voted to use more than \$3 million in congressional earmarks for a brand new bus terminal. A terminal that now sits empty. The Billy Long bus terminal to nowhere.” AJS’s advertisement concluded by encouraging voters to “call Billy Long and tell him we’re sick of earmarks and bus terminals to nowhere.” Exhibit B, track 7.

31. AJS spent \$54,572 on September 7, 2010 producing and broadcasting an advertisement criticizing Rep. Harry Teague (D-NM), then a candidate in the November 2, 2010 election for a U.S. House seat in New Mexico. Americans for Job Security, FEC Form 9, 24 Hour Notice of Disbursements/Obligations for Electioneering Communications, September 7, 2010, at 3. AJS’s advertisement first told viewers the economy is in “a tailspin” with “unemployment on the rise,” and “they just continue the taxing, spending, and bailouts.” The advertisement then said “Harry Teague was instrumental in passing a job-killing cap and trade bill. Teague’s tax would mean higher electric rates for families, higher gas prices, and cost us up to 12,000 jobs in New Mexico.” AJS’s advertisement concluded by encouraging voters to “tell Harry Teague to stop his reckless spending, bailouts, and job-killing taxes.” Exhibit B, track 8.

32. AJS spent \$980,256 on October 20, 2010 broadcasting an advertisement criticizing Gov. Joe Manchin (D-WV), then a candidate in the November 2, 2010 general election for a U.S. Senate seat in West Virginia. Americans for Job Security, FEC Form 9, 24 Hour Notice of Disbursements/Obligations for Electioneering Communications, September 21, 2010, at 3. AJS's advertisement said: "You've heard about how Joe Manchin supported the Obama stimulus that wasted money on turtle tunnels, ant research, and cocaine for monkeys. But that's not their only waste. Their stimulus wasted money on studying the atmosphere of Neptune, hunting for dinosaur eggs in China, and even the international accordion festival. We asked for jobs. What we got was waste. Really." The advertisement concluded by encouraging voters to "tell Obama and Manchin not to stimulate us anymore." Exhibit B, track 9.

33. AJS also spent \$72,100 on September 3, 2010 broadcasting an advertisement supporting Pat Toomey, then a candidate in the November 2, 2010 general election for a U.S. Senate seat in Pennsylvania. Americans for Job Security, FEC Form 9, 24 Hour Notice of Disbursements/Obligations for Electioneering Communications, September 3, 2010, at 3. The content of this advertisement is not readily available.

34. From November 1, 2009 through October 31, 2010, AJS's fiscal year, AJS's total expenditures were \$12,417,809. See AJS 2009 Form 990, Part IX. As a result, 72.2 percent of AJS's total spending for that fiscal year was for independent expenditures and electioneering communications.

COUNT I.

35. FECA and FEC regulations define a "political committee" as "any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000

during a calendar year.” 2 U.S.C. § 431(4)(A); 11 C.F.R. § 100.5(a). “Expenditures” for the purpose of this definition only includes “funds used for communications that expressly advocate the election or defeat of a clearly identified candidate.” *Buckley v. Valeo*, 424 U.S. at 80.

36. AJS made expenditures aggregating in excess of \$1,000 during 2010. AJS reported to the FEC it spent \$4,908,846 on independent expenditures for 2010, all of which were expenditures for communications that expressly advocated the election or defeat of a candidate.

37. In addition, only organizations whose “major purpose” is the nomination or election of federal candidates can be “political committees.” *Buckley v. Valeo*, 424 U.S. at 79. The FEC conducts a fact-intensive case-by-case analysis of an organization to determine if its major purpose is the nomination or election of federal candidates. Federal Election Commission, Political Committee Status, Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5601 (Feb. 7, 2007) (“Supplemental E&J”); *The Real Truth About Obama, Inc. v. FEC*, 796 F. Supp. 2d 736, 751 (E.D. Va. 2011). An organization can satisfy the major purpose doctrine through sufficiently extensive spending on federal campaign activity. See *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986); Supplemental E&J, 72 Fed. Reg. at 5601.

38. An independent expenditure is, by definition, an expenditure expressly advocating the election or defeat of a clearly identified candidate, 2 U.S.C. § 431(17), and an advertisement that qualifies as an electioneering communication is the functional equivalent of express advocacy, *Citizens United v. FEC*, 130 S. Ct. 876, 889-890 (2010).

39. As demonstrated by its extensive spending on federal campaign activity, AJS’s major purpose in 2010 was the nomination or election of federal candidates. In the fiscal year ending October 31, 2010 – two days before the 2010 elections took place – AJS spent 72.2 percent of its expenditures on independent expenditures and electioneering communications.

40. FECA and FEC regulations require all political committees to register with the FEC within 10 days of becoming a political committee. 2 U.S.C. § 433(a); 11 C.F.R. § 102.1(d).

41. AJS is not registered as a political committee with the FEC.

42. By failing to register as a political committee, AJS violated 2 U.S.C. § 433(a) and 11 C.F.R. § 102.1(d).³

COUNT II

43. FECA and FEC regulations require all political committees to file periodic reports with the FEC. 2 U.S.C. § 434(a)(4); 11 C.F.R. § 104.1(a). These reports must, among other things, identify all individuals who contribute an aggregate of more than \$200 in a year to the political committee and the amount individual each contributed, identify all political committees that made a contribution and the amount each committee contributed, detail outstanding debts and obligations, and list all expenditures. 2 U.S.C. § 434(b); 11 C.F.R. § 104.3.

44. AJS has not filed any of these periodic reports with the FEC.

45. By failing to file periodic reports required of political committees, AJS violated 2 U.S.C. § 434(a)(4) and 11 C.F.R. § 104.1(a).

³ The FEC previously considered complaints alleging AJS violated the FECA by failing to register as a political committee and by failing to file periodic reports disclosing contributions and disbursements. See MURs 5694 and 5910. The General Counsel recommended finding reason to believe AJS violated the FEC and conducting a full investigation, but the Commission failed to approve the recommendations on a 3-3 vote. Three commissioners asserted in a statement of reasons they voted against the recommendations because they concluded AJS had not made \$1,000 in expenditures expressly advocating the election or defeat of a candidate, and had not made the nomination or election of federal candidates its major purpose, because none of the advertisements at issue qualified as express advocacy. By contrast, in the 2010 elections AJS unquestionably engaged in express advocacy.

CONCLUSION

WHEREFORE, Citizens for Responsibility and Ethics in Washington and Noah Bookbinder request that the Federal Election Commission conduct an investigation into these allegations, declare the respondents to have violated the Federal Election Campaign Act and applicable FEC regulations, and order AJS to correct these violations by filing the disclosure reports required of political committees that, among other things, identify and make public each person who makes contributions aggregating more than \$200. In addition, the complainants request that the FEC impose sanctions appropriate to these violations, and take such further action as may be appropriate, including referring this matter to the Department of Justice for criminal prosecution.

Noah Bookbinder

ON BEHALF OF COMPLAINANTS
Noah Bookbinder
Executive Director
Citizens for Responsibility and Ethics
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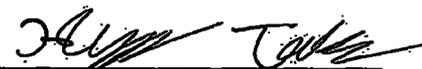
Verification

Citizens for Responsibility and Ethics in Washington and Noah Bookbinder hereby verify that the statements made in the attached Amended Complaint are, upon information and belief, true. Sworn pursuant to 18 U.S.C. § 1001.

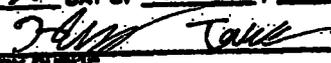


Noah Bookbinder

Sworn to and subscribed before me this 20th day of March, 2018.



Notary Public

DISTRICT OF COLUMBIA: SS
SUBSCRIBED AND SWORN TO BEFORE ME
THIS 20th DAY OF March, 2018.


NOTARY PUBLIC
My Commission Expires Nov. 14, 2021

